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Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises

Summary

This report provides an overview of the main developments related to the Special Representative's work in implementing his mandate since the presentation of his latest report to the Human Rights Council in June 2009 (A/HRC/11/13). It also notes that the reification of the categories of voluntary and mandatory approaches to business and human rights is an impediment to innovative thinking and action. Finally, it contains an update of key meetings and outreach activities undertaken by the Special Representative since the submission of his latest report to the Human Rights Council.

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I. Introduction

1. At its eighth session in June 2008, the Human Rights Council unanimously welcomed the protect, respect and remedy policy framework (see chapter II below) for managing business and human rights challenges, contained in the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/8/5). The Human Rights Council decided to extend the mandate of the Special Representative for a further three years, asking him to operationalize each of the framework's three pillars by providing concrete guidance and practical recommendations to States, businesses and other social actors on their implementation (A/HRC/RES/8/7). In June 2009, the Special Representative presented his first report under his new mandate to the Human Rights Council at its eleventh session, further elaborating the framework and updating the Council on his initial work towards operationalization (A/HRC/11/13).

2. The present report provides an overview of the main developments related to the Special Representative's work in implementing his mandate, particularly since the submission of his 2009 report (A/HRC/11/13) to the Human Rights Council. It also indicates how the overly rigid distinction between voluntary and mandatory approaches to business and human rights impedes progress on this issue. Finally, the report contains an update of meetings and outreach activities undertaken by the Special Representative since the submission of his 2009 report to the Human Rights Council.

II. The protect, respect and remedy policy framework for business and human rights

3. The protect, respect and remedy framework for business and human rights that the Human Rights Council welcomed in 2008 comprises three pillars: the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication; the corporate responsibility to respect human rights, which in essence means to act with due diligence to avoid infringing on the rights of others; and greater access by victims to effective remedy, judicial and non-judicial.

4. As noted in the 2009 report of the Special Representative to the Human Rights Council, the framework even by then had already enjoyed considerable uptake by States, companies and civil society.[1] The major global business associations, the International Chamber of Commerce, the International Organization of Employers, and the Business and Industry Advisory Committee to the Organization for Economic Cooperation and Development (OECD), said in a joint statement that the framework provided a clear, practical and objective way of approaching a very complex set of issues.[2] Several global firms have begun to realign their due

[1] A/HRC/11/13, para. 3.

[2] http://www.reports-and-materials.org/Letter-IOE-ICC-BIAC-re-Ruggie-report-May-2008.pdf.

diligence processes with the framework's principles.[3] A joint civil society statement submitted to the Council in May 2008 noted the framework's value, and several signatories have invoked it in subsequent advocacy work.[4] Amnesty International said that the framework had the potential to make an important contribution to the protection of human rights.[5] The United Nations High Commissioner for Human Rights hailed it as an important milestone.[6] The Joint Committee on Human Rights of the Parliament of the United Kingdom of Great Britain and Northern Ireland convened hearings around it;[7] a new corporate social responsibility white paper by Norway drew extensively on it;[8] and Sweden's Presidency of the European Union will dedicate a conference to its elaboration in November 2009. A number of international organizations have begun to reference the framework in updating their own policies.[9]

5. The Special Representative was particularly gratified by the very supportive statements made by the representatives of all States that spoke at the eleventh session of the Human Rights Council in June 2009, including Brazil, China, India and the European Union.

6. The policy framework was developed through extensive global consultations with business, Governments and civil society. Similarly, the operationalization of the framework is proceeding through broad multi-stakeholder consultations as well as ongoing collaboration with experts and relevant national and international organizations and initiatives.

A. The State duty to protect

7. The State duty to protect has both legal and policy dimensions but is grounded in international human rights law. The specific language employed in the main United Nations human rights treaties varies, but all include two sets of obligations. First, the treaties commit States parties to refrain from violating the enumerated rights of persons within their territory and/or jurisdiction. Second, the treaties require States to "ensure" (or some functionally equivalent verb) the enjoyment or

[3] For example, the oil company ExxonMobil, in a public commemoration of the sixtieth anniversary of the Universal Declaration of Human Rights, cited the framework's corporate responsibility to respect principle as a benchmark for its own employees. Their statement is available at: http://www.exxonmobil.com/corporate/news_opeds_20081218_humanrights.aspx.

[4] A/HRC/8/NGO/5.

[5] http://www.reports-and-materials.org/Amnesty-submission-to-Ruggie-Jul-2008.doc.

[6] http://www.ohchr.org/EN/NewsEvents/Pages/AMilestoneforBusinessandHumanRights.aspx.

[7] http://www.parliament.uk/documents/upload/Business_and_HR_CallforEvidence.pdf.

[8] http://www.regjeringen.no/en/dep/ud/Documents/Propositions-and-reports/Reports-to-the-Starting/2008-2009.

[9] The Special Representative is collaborating with OECD and the European Commission, and has twice presented invited statements to the United Nations Commission on International Trade Law (UNCITRAL).

realization of those rights by rights holders.[10] In turn, ensuring that rights holders enjoy their rights requires protection by States against other social actors, including business, who impede or negate those rights. Guidance from international human rights bodies suggests that the State duty to protect applies to all recognized rights that private parties are capable of impairing and to all types of business enterprises.[11] The duty to protect is a standard of conduct, not result, meaning that States are expected to take appropriate steps to prevent, investigate, punish and redress abuse by private actors, including business, affecting the rights of persons within their territory and/or jurisdiction. The extraterritorial scope of the duty remains unsettled under international human rights law, but it is generally accepted that States are not prohibited from taking steps to regulate the overseas behaviour of companies incorporated within their jurisdiction, provided there is a recognized jurisdictional basis and that an overall test of reasonableness is met.

8. Governments must balance different societal needs, which entails making difficult policy choices. Nevertheless, the business and human rights domain exhibits considerable legal and policy incoherence. There is both vertical and horizontal policy incoherence: vertical in that States take on human rights obligations but do not sufficiently implement them; and horizontal in that human rights concerns have traditionally been kept separate from the policy and regulatory domains that address business most directly. States therefore need to think about how to integrate such considerations into areas like investment and trade policy; securities and corporate law; and export credit and insurance.

9. Recent legal and policy developments deal with some of the challenges. In previous reports, the Special Representative noted four significant legal developments: a gradual convergence of standards for international crimes that apply to corporations under national law, largely related to the harmonization of national standards applicable to individuals with those contained in the Rome Statute of the International Criminal Court; a developing standard of corporate complicity in human rights abuses; growing consideration of "corporate culture" by States in deciding criminal responsibility or punishment; and an increasing number of civil cases brought against parent companies for their own acts and omissions in relation to harm involving their foreign subsidiaries.[12]

10. The Special Representative has identified four core areas on which to focus in relation to the State duty to protect.

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[10] For example, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child use "respect and ensure", with "respect" in the State context meaning that the State must refrain from violating the rights. The Convention on the Rights of Persons with Disabilities requires States parties to "ensure and promote", and to take appropriate measures to "eliminate" abuse by private "enterprises". The International Convention on the Elimination of All Forms of Racial Discrimination requires that each State party "shall prohibit and bring to an end ... racial discrimination by any persons, group or organization". The Convention on the Elimination of All Forms of Discrimination against Women requires States parties "to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise". In the International Covenant on Economic, Social and Cultural Rights States parties undertake "to take steps ... achieving progressively the full realization of the rights", while its rights-specific provisions, such as those dealing with labour, refer to States ensuring those rights.

[11] See A/HRC/8/5/Add.1 for a summary of the research of the Special Representative on the United Nations human rights treaties and commentaries by the treaty bodies.

[12] A/HRC/4/35, paras. 19-32; A/HRC/8/5, paras. 31 and 90; and A/HRC/8/16.

11. The first area is safeguarding the ability of States to meet their human rights obligations, including their duty to protect against business-related harm. One way in which States may effectively "tie their own hands" in policy terms is by signing on to overly broad investment agreements, an issue elaborated in the reports of the Special Representative submitted to the Human Rights Council at its eighth and eleventh sessions.[13] Accordingly, the Special Representative is exploring the feasibility of developing guidance for investment contracts that ensure investor protection without constraining bona fide human rights objectives. In this context, the Special Representative convened an expert workshop in Paris on 25 and 26 June 2009 with investment negotiators and others who are involved in negotiating and carrying out investment projects in all regions of the world to discuss investment contracts and human rights. The two-day workshop discussed ways in which States, companies and others could ensure that investment contracts did not interfere with the State duty to protect and reflect the corporate responsibility to respect.[14] The Special Representative is exploring the extent to which elements in the international trade regime may also be relevant to addressing this challenge.

12. Second, the Special Representative has stressed that Governments need to consider human rights when they are involved in business ventures, whether as owners, investors, insurers, procurers or simply promoters. When States do business with business there may be particularly strong policy reasons to ensure corporate respect for rights, not only to safeguard the State's reputation but also to provide support to their business partners and other companies to respect rights. To this end, the Special Representative has focused in particular on export credit agencies, but he is also exploring other State-business relationships.

13. Third, even when Governments are not connected directly to a business venture, they must foster corporate cultures that are respectful of rights. Here the Special Representative has focused on the role of corporate law and State corporate social responsibility policies. The implications of corporate law for human rights remain poorly understood, and traditionally the two fields have remained institutionally separate, both from a legal and policy point of view. The Special Representative is working with 19 leading corporate law firms from around the world to help him identify whether and how national corporate law principles and practices in over 40 jurisdictions currently foster corporate cultures that are respectful of human rights.[15] Following wide consultations and an expert round table later this year, he will decide what, if any, recommendations to make to States in this area and will also seek to clarify the opportunities and challenges which may come from various policy and legal reform options.

14. Another available tool is found in State corporate social responsibility policies, which vary substantively and in form but generally are intended to help encourage

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[13] In May 2009 the final report entitled "Stabilization clauses and human rights" was published. The report details the empirical research on stabilization clauses in investment contracts and describes the year of consultation the Special Representative carried out since the consultation draft of the report was published in March 2008. The report is available at: http://www.ifc.org/ifcext/sustainability.nsf/Content/Publications_LessonsLearned.

[14] A summary report of the meeting is available at: http://www.reports-and-materials.org/Report-on-Ruggie-responsible-contracting-workshop-25-26-Jun-2009.pdf.

[15] More information is available at: http://www.reports-and-materials.org/Corporate-law-firms-advise-Ruggie-23-Mar-2009.pdf.

responsible business practices, including with respect to human rights.[16] The Special Representative has seen that in some States, corporate social responsibility policies establish processes whereby access to official assistance, such as export credit or investment insurance, may be linked to companies having a corporate social responsibility policy, participating in the United Nations Global Compact or confirming their knowledge of the OECD Guidelines for Multinational Enterprises. To learn more about State corporate social responsibility policies and how they may contribute to greater policy coherence in business and human rights, the Special Representative is surveying Member States of the United Nations as to whether they have such policies, and if so, the extent to which they encourage both State agencies and companies to foster corporate respect for human rights.

15. Fourth, the Special Representative has stressed the urgency of developing innovative policy measures and tools that Governments could employ to guide companies operating in conflict-affected areas, in which governance structures and the rule of law by definition are weak or non-existent. He is in discussions with an informal group of home and host States from a geographically representative sample, including States emerging from recent conflict, on the parameters of such a project.

16. Finally, and more broadly, the Special Representative intends to further clarify the extraterritorial scope of the State duty to protect, including what States are required to do under international human rights law in order to prevent and address corporate-related abuse abroad, what they are permitted to do and what might make good policy sense for them to do.

B. The corporate responsibility to respect

17. The second pillar of the framework is the corporate responsibility to respect human rights. In addition to complying with national laws, the corporate responsibility to respect human rights is the baseline expectation for all companies in all situations; in essence, it means to act with due diligence to avoid infringing on the rights of others. The corporate responsibility to respect is recognized by virtually every voluntary initiative and in soft law instruments, such as the International Labour Organization (ILO) Tripartite Declaration and the OECD Guidelines for Multinational Enterprises, and is a core principle of the United Nations Global Compact. Companies may take on additional responsibilities voluntarily, but [illegible] companies must ensure that they meet their responsibility to respect rights.

18. Relatively few companies have systems in place that would enable them to support claims that they respect human rights. What is needed therefore is a due diligence process whereby companies become aware of, prevent and address adverse human rights impacts. The four core elements of human rights due diligence for companies identified by the Special Representative are: having a human rights policy; undertaking human rights impact assessments; integrating human rights throughout a company as appropriate; and tracking and reporting performance.

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[16] Many OECD countries have such policies; elements can also be found in Brazil, China, Indonesia and elsewhere.

19. The mandate of the Special Representative was created because there was no clarity on corporate responsibilities with respect to human rights as a whole, and therefore on how to prevent corporate-related human rights abuses from occurring. This was recognized in the response of one Government to the Special Representative's questionnaire to States in 2006:

> The existing international CSR [corporate social responsibility] framework is marked by numerous voluntary codes, moving benchmarks and ongoing debate regarding the appropriate boundaries between governments, business and other stakeholders. Furthermore, while most multilateral CSR initiatives make at least a reference to human rights, a significant gap in the existing framework is the lack of an authoritative statement — akin to the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work — on business and human rights against which company activity can be measured, or an accepted methodology with which to assess such activity.[17]

20. The Special Representative has already filled a normative gap by building consensus around the corporate responsibility to respect human rights; he is now working to elaborate what that responsibility means in practice and to fulfil his mandate to elaborate further on the scope and content of the corporate responsibility to respect all human rights and to provide concrete guidance to business and other stakeholders, as requested by the Human Rights Council.

21. To that end, he aims to produce a set of guiding principles that both address the processes through which a company should perform its human rights due diligence and provide guidance for the complex dilemmas that businesses may face in fulfilling their responsibility to respect, such as what to do when international human rights standards conflict with domestic law.

22. With regard to human rights due diligence, the focus of the Special Representative will be on providing guiding principles that are enduring and of broad application to business, for example, to small- and medium-sized enterprises as well as to transnational corporations, while also offering clear benchmarks to help individual companies carry out this due diligence in practice. He will also address the compatibility and distinctiveness of human rights in relation to other issues that businesses address, such as ethics and environmental sustainability.

23. The complex dilemmas include when international human rights standards conflict with domestic law; when a company's responsibilities might go beyond respecting human rights; and how to delineate a company's responsibility, for example with regard to supply chains or joint venture partners. On these issues, the Special Representative will not create falsely convenient or prescriptive answers where none exist, but rather he aims to provide principled guidance to support companies' arriving at context-appropriate solutions.

24. Since his 2008 report, the Special Representative has been engaged in bilateral exchanges with experts on the corporate responsibility to respect, including those involved with other initiatives related to corporate social responsibility. The Special Representative does not intend his efforts to supersede such initiatives, many of

[17] A summary of all the State responses to the questionnaire received by the Special Representative are contained in A/HRC/4/35/Add.3.

which have been developed for particular industries or issues, but rather to provide the essential bedrock of principles applicable across all rights and industries on which other initiatives can develop.

25. The Special Representative is continuing with expert consultations and plans to organize an online consultation towards the end of 2009 aimed at engaging a broad spectrum of participants in his elaboration of the corporate responsibility to respect. He will also hold a multi-stakeholder consultation in Germany in February 2010.

C. Access to remedy

26. In his report to the Human Rights Council at its eleventh session, the Special Representative observed that judicial and non-judicial grievance mechanisms formed part of both the State duty to protect and the corporate responsibility to respect. They were essential to ensuring access to remedy for victims of corporate abuse. Without appropriate steps by States to investigate, punish and redress abuse against persons in their jurisdiction and/or territory, the duty to protect was rendered weak or even meaningless. For States, they were also means of enforcing or incentivizing corporate compliance with relevant law and standards, and of deterring abuse. For companies, operational-level mechanisms had the added benefit of giving early warning of problems and helping mitigate or resolve them before abuses occurred or disputes compounded. As such, they could be as essential to effective risk management as monitoring and audits.

27. However, the Special Representative has emphasized that too many barriers exist to accessing judicial remedy, and too few non-judicial mechanisms meet the minimum principles of effectiveness that he articulated in his reports to the Human Rights Council at its eighth and eleventh sessions. Further improvements, shared learning and innovations are required. The Special Representative's continuing work on access to remedy is aimed at meeting each of these three objectives.

28. The Special Representative is exploring three aspects of access to justice: legal barriers, practical obstacles, and particular barriers confronting potentially at-risk or vulnerable groups. In relation to legal barriers, his ongoing work is focused on: surveying existing national standards of corporate civil and criminal liability; examining key jurisdictional challenges, especially in dealing with corporate groups and with the overseas activities of companies; and highlighting the interactions between corporate and individual liability.

29. In terms of practical barriers, the Special Representative is considering: the need to ameliorate costs and ensure access to legal advice; the role of public interest claims and group actions; and the investigatory and evidentiary challenges involved in cases where the relevant harm occurs overseas. His work on practical barriers is influenced by a broader awareness of the difficulties in ensuring remedy in jurisdictions with weak or underresourced judicial systems.

30. Turning to potentially vulnerable groups, the Special Representative is considering how the failure to adequately protect the rights of women and indigenous peoples in national laws can impact upon their ability to access remedy for corporate-related abuse. He also hopes to receive expert input on successful approaches to dispute resolution between indigenous communities and companies,

encompassing both judicial and non-judicial elements. Finally, he is considering the position of other groups that may be marginalized in their interactions with transnational corporations and in accessing remedy, particularly artisanal and small-scale miners.[18]

31. In his exploration of these issues, the Special Representative is building upon the valuable work of a number of legal, non-governmental, academic and business organizations. He looks forward in particular to the outcomes of the study that the European Union will undertake in early 2010 on the human rights and environmental obligations of European Union-domiciled companies in relation to their overseas operations. In September 2009, the Fafo Institute for Applied International Studies, Amnesty International and the Norwegian Peacebuilding Centre (Noref) will jointly convene a meeting in support of the mandate to examine a number of these issues and possible steps forward. The Special Representative will continue to engage with stakeholders on how these and other obstacles to justice for affected individuals and communities could be addressed.

32. With regard to access to remedy via non-judicial channels, the Special Representative is currently pursuing three areas of activity.

33. First, as highlighted in his 2009 report to the Human Rights Council, the Special Representative is undertaking a 20-month project to pilot the seven principles for company-level mechanisms: legitimacy; accessibility; predictability; equitability; rights-compatibility; transparency; and dialogue and engagement. This project will involve four core pilots and one mini-pilot, ranging across four continents and five sectors. The core pilots are with the Sakhalin Energy Investment Corporation in the Russian Federation, a joint venture of Gazprom, Shell, Mitsui and Mitsubishi; Carbones del Cerrejón in Colombia, a joint venture of Anglo American, BHP Billiton and Xstrata; Esquel Group and its facility in Viet Nam; and Tesco with a group of its suppliers. The mini-pilot is with Hewlett-Packard and two of its suppliers in China. Final reports on the pilots will be made publicly available.

34. The Special Representative is grateful to the International Organization of Employers, the International Chamber of Commerce, and the Business and Industry Advisory Committee of the OECD for their support of this project and to all participating companies for their collaboration. He looks forward to learning from them and their stakeholders' experience.

35. In addition to looking at operational-level grievance mechanisms, the Special Representative has begun to explore the other factors internal to companies that can determine how effective they are at conflict management. At this stage, the Special Representative is focusing on the mining industry to understand better the relationship between corporate culture and conflict management. Corporate culture is taken to refer to a company's authentic values, plus the practices, systems and processes that drive those values into the organization. Conflict is understood as a continuum that ranges from the normal tensions and frictions that arise from human interactions at one end through to violent conflict at the other. Initial research and expert consultations have highlighted a number of factors related to corporate culture that appear to play a significant role in the effectiveness of mining

[18] The Special Representative looks forward to receiving the results of a study undertaken by a team from the Yale Law School Lowenstein Human Rights Clinic.

companies at conflict management.[19] The Special Representative will continue to explore these issues over the coming year.

36. Finally, the Special Representative continues to develop BASESwiki (www.baseswiki.org), the interactive online forum for finding, learning about and discussing the grievance mechanisms and dispute resolution resources available to companies and their external stakeholders. Since his 2009 report to the Human Rights Council, BASESwiki has been launched in Korean and Japanese, thanks to the support of partners in the Republic of Korea and Japan. The Arabic BASESwiki is under development and will be ready soon, completing the launch of the website in the six United Nations languages. Partnerships are under discussion with organizations in a variety of further countries to assist in bringing this resource closer to the grass roots.

37. BASESwiki is a resource built by users for users. The Special Representative therefore encourages all stakeholders to visit the site, join the community, and explore, improve or add to the information available in order to build this important resource. The Special Representative remains indebted to the International Bar Association for its collaboration and to the Compliance Adviser/Ombudsman of the World Bank Group and JAMS Foundation for their support of this project.

III. Mandatory versus voluntary: an impediment to progress

38. In many countries, creative thinking and innovative policy relevant to business and human rights has been impeded by adherence to a reified and increasingly stale bifurcation of voluntary and mandatory means. The Special Representative raised this issue during presentations made in 2009 to the European Union Parliamentary Subcommittee on Human Rights and to the Joint Committee on Human Rights of the Parliament of the United Kingdom.

39. Those on the mandatory side ignore the fact that international treaties are voluntary in the sense that no country can be forced to adopt one; at the global level they need to be negotiated among 192 Member States of the United Nations with very different outlooks and capacities; and even if a meaningful common denominator for a binding treaty in business and human rights were reached, compliance de facto would end up being largely voluntary because no international enforcement mechanism exists in this domain, or is likely to anytime soon.

40. On the other side, companies that advocate pure voluntarism have yet to explain how one ever reaches sufficient scale to make a difference or how to pull laggards along.

41. Governments advocating pure voluntarism often fail to provide even non-legal guidance or incentives for companies to respect human rights, thereby implying that voluntary standards have little if any practical consequence. Furthermore, they do business no great favour by failing to provide adequate assistance to companies, especially when they operate in tough environments, such as areas in conflict or otherwise weak governance zones, where companies have done the greatest human rights harm and run into the most trouble. In the end, policies of voluntarism are

[19] www.reports-and-materials.org/Conflict-management-and-corporate-culture-in-mining-roundtable-12-Jun-2009.pdf.

often indistinguishable from laissez-faire, that is to say, they are not policies at all. There is a need to recognize that a smart mix of mandatory and voluntary measures is required and to get on with practical problem solving.

IV. Key events and outreach activities

A. General outreach

42. The Special Representative has continued his extensive outreach through bilateral and multi-stakeholder consultations, expert convenings and engagement with international organizations.

1. Regional consultations

43. The Special Representative convened two regional consultations in 2009. The first took place in New Delhi, on 5 and 6 February 2009, and the second took place in Buenos Aires, on 14 and 15 May 2009. Both consultations followed the same format and included representatives from States, corporations and civil society, as well as academics and legal practitioners from across the respective regions. Like the previous regional consultations convened by the Special Representative, these regional consultations were not a country visit organized to investigate the situation of human rights at the national level, but rather were intended to bring people together from across the region so that the Special Representative could hear their views on how best to operationalize the protect, respect and remedy framework. In particular, the consultations were intended to facilitate networking and information-sharing between stakeholders not based in North America or in Europe and who are without the means to participate in the consultations organized there.

44. The consultations focused on the three pillars of the policy framework for business and human rights, potential ways to operationalize them, and challenges and opportunities inherent in doing so. A final open session gave the opportunity to participants to discuss business- and human rights-related issues of particular importance for them. After both consultations, civil society organizations that participated in the consultation made submissions to the Special Representative, to which he then responded.[20]

2. International institutions

45. In October 2008, the Special Representative met with members of the Inter-American Commission on Human Rights to discuss the approach of the Commission to business and human rights.[21]

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[20] The report from the consultations, along with the civil society submissions and the Special Representative's responses are available at: http://www.business-humanrights.org/Updates/Archive/UNSpecialRep-Consultationsworkshops.

[21] For the report on the Inter-American Human Rights System, see: http://www.reports-and-materials.org/State-Responsibilities-under-Inter-American-System-Apr-2008.pdf. For a background note on the Special Representative's meeting with the Inter-American Human Rights Commission, see: http://www.reports-and-materials.org/Ruggie-presentation-IACHR-17-Oct-08.pdf.

46. In a statement delivered on 18 May 2009 to the United Nations Permanent Forum on Indigenous Issues at its eighth session, held in New York, the Special Representative made clear that in operationalizing the framework it would be important to better understand the particular position and experiences of indigenous peoples. He has underlined that in projects affecting indigenous peoples, companies should consider additional standards specific to those communities.

47. In its final report, the Permanent Forum gave its support to the protect, respect and remedy framework.[22] It also supported the Special Representative's broader work in urging States to integrate human rights into those areas that most affected business practices and encouraging companies to consider relevant standards and adopt meaningful human rights due diligence processes in relation to their impacts on indigenous peoples.[23] The Permanent Forum agreed that in order to ensure access to effective remedies, States needed to enforce corporate compliance with relevant laws and standards, and businesses should put in place operational-level grievance mechanisms of the sort the Special Representative had proposed to provide early warning and prevent escalation of problems. Significant barriers to accessing effective judicial and non-judicial remedies persisted, for indigenous peoples as well as for other groups, and the Permanent Forum indicated that it supported the ongoing work of the Special Representative to identify and propose ways to address those barriers.[24]

3. National institutions

48. After the submission of his 2009 report to the Human Rights Council, the Special Representative was invited to give evidence to the Joint Committee on Human Rights of the Parliament of the United Kingdom as part of its enquiry into business and human rights, and to the Australian National Human Rights Consultation Committee, which is advising the federal Government on policy options to strengthen human rights protection in Australia, including with regard to business.

49. During his appearance before the Joint Committee on Human Rights of the Parliament of the United Kingdom on 3 June 2009, the Special Representative welcomed the Committee's decision to use the protect, respect and remedy framework as the basis on which to structure its enquiry. He reiterated the various governance gaps in the business and human rights arena and underlined that addressing those gaps required creative thinking and innovative policy that was often impeded by continued adherence by Governments to a reified bifurcation of voluntary and mandatory means, as described above. The Special Representative addressed a range of questions from the Committee and looks forward to reading the results of their enquiry.

50. In his written submission to the Australian National Human Rights Consultation Committee, the Special Representative highlighted the framework, and as in his remarks to the United Kingdom enquiry, he encouraged the Committee to

[22] E/2009/43, chap. I, sect. B, para. 12.
[23] E/2009/43, chap. I, sect. B, paras. 13-15.
[24] E/2009/43, chap. I, sect. B, para. 16.

reconsider commonly held assumptions with respect to business and human rights.[25]

B. Other key activities

1. Leadership Group

51. On 14 and 15 June 2009, the Special Representative convened the first meeting of his Leadership Group in Salzburg, Austria. The Leadership Group was established in September 2008 to offer strategic and substantive advice to the Special Representative. The first meeting of the Group explored progress in the implementation of the mandate of the Special Representative and how members, both as a group and individually, could act as force multipliers for that mandate.[26] The meeting was hosted by the Government of Austria and the non-governmental organization RespACT-Austrian Business Council for Sustainable Development. A meeting note is available on the website of the Special Representative.[27]

2. Integrating a gender perspective

52. To address the provision in the new mandate of the Special Representative asking him to integrate a gender perspective into his work, the Special Representative accepted an offer from the non-governmental organization Realizing Rights: the Ethical Globalization Initiative to convene a meeting of gender experts to discuss the issue. The meeting took place on 29 June 2009, in New York.[28]

V. Conclusion

53. The international community is still in the early phases of adapting the international human rights regime to provide more effective protection to individuals and communities against corporate-related human rights harm. The Special Representative, however, has stated on a number of occasions that business as usual isn't good enough for anybody, including business itself.

54. As the present report indicates, the efforts of the Special Representative to operationalize the policy framework for business and human rights are moving ahead with the involvement of a wide group of individuals and organizations from all stakeholders and constituencies. The Special Representative remains grateful for this ongoing engagement without which his efforts would fail. He also remains grateful to the range of Governments that continues to support his work.

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[25] The submission is available at: http://www.reports-and-materials.org/Ruggie-submission-to-Australian-Natl-Human-Rts-Consultation-Committee-9-Jun-2009.pdf.

[26] For information and membership of the Leadership Group please go to: http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative.

[27] A summer report of the meeting is available at: http://www.reports-and-materials.org/Ruggie-Salzburg-Leadership-Group-mtg-15-Jun-2009.pdf.

[28] A summary report of the meeting is available at: http://www.reports-and-materials.org/Gender-meeting-for-Ruggie-29-Jun-2009.pdf.

55. The Special Representative is looking forward to the global consultation on business and human rights, scheduled for 5 and 6 October 2009 and organized by the Office of the High Commissioner for Human Rights pursuant to Human Rights Council resolution 8/7, which will focus on ways and means of operationalizing the policy framework. He is hopeful that this important event, comprising inputs from a range of experts and groups, including representatives of victims of corporate-related human rights abuse, will provide valuable input to his efforts.